



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

TRG
Docket No: 5254-00
2 October 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) Case Summary
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Navy filed an application with this Board requesting recharacterization of his discharge and changes in the reason for discharge and reenlistment code.

2. The Board, consisting of Mr. Pfeiffer, Mr. McCulloch and Ms. McCormick, reviewed Petitioner's allegations of error and injustice on 19 September 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although it appears that Petitioner's application was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner enlisted in the Navy on 20 March 1995 at age 19. On 22 June 1995 he was convicted by a summary court-martial of an unauthorized absence of about 24 days. The court sentenced him to forfeitures of pay totaling \$1052. On 30 August 1995 he reported aboard the USS FORT MCHENRY (LSD 43). On 10 January 1996 he received nonjudicial punishment for an unauthorized absence of about 10 days. The punishment imposed included restriction and extra duty. Forfeitures of pay totaling \$854.40 was suspended for six months. Subsequently, the suspension was vacated due to continued misconduct. On 12 February 1996, he

received nonjudicial punishment for absence from his place of duty. The punishment imposed included restriction, extra duty and a reduction in rate to SR (E-1).

d. Based on the foregoing record of misconduct, Petitioner was processed for an administrative discharge due to a pattern of misconduct. At that time he elected to waive his right to have his case heard by an administrative discharge board. On 26 March 1996 the commanding officer recommended a general discharge and stated, in part, as follows:

...(his) preoccupation with personal problems has caused him to exhibit a pattern of misconduct. He has no potential for further service. To retain him would present a continued administrative and disciplinary burden to the command ...

On 4 April 1996 the discharge authority directed discharge under other than honorable conditions. He was so discharged that same day. At that time he was not recommended for reenlistment and was assigned an RE-4 reenlistment code.

e. Petitioner has submitted evidence showing that at the time of his service his mother was suffering from depression. He states that his mother made several suicide attempts and he felt that he had to go home to assist her. While in Japan, he received a letter from his mother stating that she was again going to commit suicide. He states that he attempted to get assistance from his command, such as a transfer closer to home, but no one would listen to his problems. The evidence shows that his mother has improved with treatment. He claims that he has been steadily employed since discharge but still desires to serve in the Navy.

MAJORITY CONCLUSION:

Upon review and consideration of all the evidence of record, the majority, consisting of Mr. Pfeiffer and Ms. McCormick, concludes that Petitioner's request warrants partial favorable action. The majority weighed the nature of his offenses against the evidence he submitted showing that his mother was mentally ill and concludes, in retrospect, that the commanding officer's recommendation for a general discharge should have been approved. Therefore, the Board concludes that the discharge under other than honorable conditions issued on 4 April 1996, should be recharacterized to a general discharge.

Concerning the reason for discharge, the Board notes that Petitioner received three disciplinary actions for unauthorized

absence totaling about 34 days. Although his personal situation was unfortunate, the majority believes that it was proper to hold him accountable for his actions. Accordingly, the majority concludes that he was properly discharged by reason of misconduct. Given this conclusion, the majority further concludes that the RE-4 reenlistment code was properly assigned since this code is required when misconduct is the reason for separation.

In view of the foregoing, the majority finds the existence of an injustice warranting the following corrective action.

MAJORITY RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that on 4 April 1996 he was issued a general discharge by reason of misconduct vice the discharge under other than honorable conditions actually issued on that date.

b. That the remainder of his requests be denied.

c. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

d. That, upon request, the Veterans Administration be informed that Petitioner's application was received by the Board on 1 August 2000.

MINORITY CONCLUSION:

Mr. McCulloch disagrees with the majority and concludes that Petitioner's request does not warrant favorable action. In this regard, he notes that Petitioner accumulated about 34 days of unauthorized absence. Further there is no evidence, other than his uncorroborated statement, that he made the command aware of his personal problems or made any attempts to solve his problems without committing unauthorized absences. Given the circumstances, the minority concludes that Petitioner should be held responsible for his actions and a discharge under other than honorable conditions was appropriate in this case. The minority also concurs with the majority that there is no merit in his request for changes in the reason for discharge and reenlistment code.

In view of the foregoing, the minority finds no injustice warranting corrective action.

MINORITY RECOMMENDATION:

That no relief be granted.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder




ALAN E. GOLDSMITH
Acting Recorder

5. The foregoing report of the Board is submitted for your review and action.



W. DEAN PFEIFFER

MAJORITY REPORT:
Reviewed and approved:



Joseph G. Lynch
Assistant General Counsel
(Manpower & Reserve Affairs)

~~MINORITY REPORT:~~
~~Reviewed and approved:~~